

CRR-1403-2023

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

237

CRR-1403-2023

Date of decision: 14.09.2023

Parminder Singh

....Petitioner

V/s

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Narinder Singh Dadwal, Advocate for the petitioner.
Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Challenge in the present criminal revision petition is to order dated 09.05.2023 (Annexure P-1), passed by Additional Sessions Judge, Ludhiana, whereby application under Section 311 Cr.P.C. (Annexure P-2) filed by prosecution for summoning two witnesses including the petitioner for their re-examination, has been rejected.

2. Succinct facts first, as pleaded in the instant petition.

2.1 Initially, an FIR No.276 dated 04.10.2017 under Sections 307, 326, 452, 506, 148, 149 IPC and Sections 302, 201 IPC (added later on) was registered at Police Station Daba, District Ludhiana on the statement of complainant- Parminder Singh (petitioner herein) against respondent Nos.2 to 19. After completion of investigation, report under Section 173 Cr.P.C. was presented on 03.01.2018 and charges were framed on 28.09.2018. Thereafter, evidence of complainant/petitioner and one Gurcharan Singh (injured) was recorded before the Court below. During the pendency of said proceedings, three supplementary challans against accused Dalwinder Singh, Vishal Sharma and Deepak Rana and Akashdeep Singh (respondent Nos.15 to 18 herein) were presented on 17.08.2019,

CRR-1403-2023

19.04.2019 and 25.10.2018, respectively and accordingly amended charges were framed on 18.09.2019 and 15.10.2019 against the accused.

2.2 Thereafter, witnesses were examined and cross-examined by defence but due to inadvertence, memos and statements attached with supplementary challans were not put to witnesses during examination which has necessitated the prosecution to move application under Section 311 Cr.P.C. for summoning the complainant-Parminder Singh (petitioner herein) and injured Gurcharan Singh for their re-examination.

2.3 However, learned Court below vide impugned order dated 09.05.2023 (Annexure P-1), dismissed the said application by observing that the proposed witnesses sought to be examined by prosecution were already examined on material points and as such, their summoning was not necessary for adjudication of the case.

3. Learned counsel for the petitioner submits that Court below while passing the impugned order has failed to appreciate the fact that three supplementary challans were presented on different dates and three amended charges were also framed against accused (respondent Nos.15 to 18 herein). It is for this reason, the memos and statements attached with these aforesaid supplementary challans could not be put to witnesses, which has material bearing on proper adjudication of the case.

3.1 He further submits that learned Court below while dismissing the application failed to consider the fact that the case is still at the stage of defence evidence and arguments and thus no harm would be caused to either of the parties. Relies upon judgment of the Supreme Court reported as *Varsha Garg vs. State of Madhya Pradesh and others*¹ to contend that there is no bar to file an application under Section 311 Cr.P.C. even after closure of evidence.

¹CrI. Appeal No.1021-2022 decided on 08.08.2022

CRR-1403-2023

4. Status report by way of affidavit of Sandeep Wadehra, Assistance Commissioner of Police, Industrial Area-B, Ludhiana has been tendered, in course of hearing, which is taken on record.

4.1 On a Court query, learned State counsel, under instructions from police official present, submits that respondent No.1-State has no objection in case application under Section 311 Cr.P.C. (Annexure P-1) filed by prosecution before the Court below is allowed and both the witnesses are summoned for re-examination. He further submits that it is factually correct that prosecution has filed three supplementary challans after recording evidence of witnesses at the later stage which may have rendered the examination of those witnesses incomplete at the time when they were discharge by the Court.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. It is now axiomatic that Section 311 of the Cr.P.C. is a discretionary power vested in Court which has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meets the ends of justice. Reference may be had to **V.N. Patil Vs. Niranjan Kumar**². The Supreme Court in **J.K. International Vs. State (Government of NCT of Delhi)**³ observed that an application under Section 311 Cr.P.C. cannot be dismissed merely on the ground that it will lead to filling in the loopholes of the prosecution case. Power must be exercised wherever the Court finds that any evidence is essential for the just decision of the case and is not constrained by the closure of evidence.

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to

² (2021) 3 SCC 661

³(2001) 3 SCC 462

CRR-1403-2023

adduce the same earlier. In the instant case, prejudice would indeed be caused to petitioner herein and the prosecution, unless afforded an effective opportunity to re-examine the two witnesses including the petitioner himself which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity is granted to re-examine these witnesses, notwithstanding that they have already been examined on material points in the case on 23.11.2021 and 14.09.2021.

8. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, I deem it appropriate to grant one effective opportunity for re-examination of the complainant/petitioner and PW Gurcharan Singh. Accordingly, present petition is allowed and the impugned order dated 09.05.2023 is set aside. Learned Court below is directed to give one effective opportunity for re-examination of the complainant/petitioner and PW-Gurcharan Singh.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 14, 2023
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No